IN THE FRANKLIN COUNTY MUNICIPAL COURT
CIVIL DIVISION
COLUMBUS, OHIO

INSIGHT CAPITAL, LLC,	:	
	:	
Plaintiff;	:	**Case No. 2020 CVF 22447**
	:	
v.	:	
	:	
APRIL WILLIAMS,	:	**Judge Jodi Thomas**
	:	
Defendant.	:	

DECISION & JUDGMENT ENTRY

This matter is before the Court on Defendant's motion for summary judgment in its favor on Plaintiff's complaint and on its counterclaims, and on Plaintiff's cross-motion for summary judgment in its favor on its complaint and on Defendant's counterclaims. The motions have been fully briefed by the parties.

Plaintiff's complaint alleges the following. On April 28, 2019, Defendant April Williams executed a "Line of Credit and Security Agreement" with Green Bear Ohio, LLC dba Crestline Financial ("Green Bear"). Under the agreement, Green Bear "agreed to advance a line of credit in the amount of $1,101.00" to Defendant under R.C. 1321.51 *et seq.* The agreement required Defendant to "repay any amounts advanced on the Line of Credit within a 30-day billing cycle," and required payment of certain fees and interest "at the rate of 24.99%." Defendant defaulted under the agreement by failing to make a required payment on October 17, 2019. Plaintiff Insight Capital, LLC, seeks to enforce the agreement against Defendant as the assignee of Green Bear. Specifically, Plaintiff seeks to recover the principal amount owed under the agreement, annual charges of $150, a credit investigation fee of $10, plus interest on the principal balance in the amount of 24.99% from the date of judgment, plus costs.

In her answer to the complaint, Defendant characterizes the parties' transaction as "a $500 loan," denies that she received a line of credit, and that the agreement Plaintiff seeks to enforce is void under R.C. 1321.36(C). Defendant asserts that this case "involves an illegal scheme by CheckSmart, Green Bear Ohio LLC and Plaintiff to issue and collect illegal payday loans under a scheme to attempt to evade compliance with new state lending laws." Defendant's pleading asserts counterclaims for violation of R.C. 1321.35 *et seq* (Short-Term Loan Act), violation of R.C. 1321.51 *et seq* (Mortgage Loan Act), violation of R.C. 1345.01 *et seq* (Ohio Consumer Sales Practices Act), and for civil conspiracy.

In Defendant's motion for summary judgment, she argues she is entitled to judgment on Plaintiff's complaint because the parties' April 2019 agreement "is void because it was made in violation of Ohio lending and consumer laws." Defendant presents two alternative arguments for why the agreement is void. First, the agreement issued a loan for less than $1,000 and Green Bear is not licensed under the Short-Term Loan Act to issue such a loan, as required; therefore, the loan is void pursuant to R.C. 1321.36(C). Second, alternatively, the agreement is void because Green Bear is prohibited from engaging in acts or practices to evade the prohibition against Mortgage Loan Act registrants issuing loans for $1,000 or less or that have a duration of one year or less. R.C. 1321.592(B). Defendant also argues that the agreement "violated numerous other substantive and procedural requirements of the Short-Term Loan Act."

On her counterclaims, Defendant argues in her motion for summary judgment that Plaintiff is liable to her for violating the Short-Term Loan Act, per R.C. 1321.47(C), and for violating R.C. 1321.57 of the Mortgage Loan Act – the latter violation requiring all interest paid under the agreement to be forfeited, per R.C. 1321.56. Defendant further argues Plaintiff is liable under the Consumer Sales Practices Act for "knowingly * * * maintaining this collection action because the

unlawful nature of the transaction was apparent on the face of the loan documents Plaintiff sought to enforce."

In its memorandum contra to Defendant's motion for summary judgment, and in its own motion for summary judgment, Plaintiff argues the undisputed evidence before the Court shows that Defendant failed to make a required payment under the parties' agreement and is therefore liable to Plaintiff under the agreement. Plaintiff argues that the parties' agreement is not void under the Short-Term Loan Act because it was made under the Mortgage Loan Act. Specifically, Plaintiff argues the agreement is authorized by R.C. 1321.58.

Plaintiff argues it is not liable for any violation of the Short-Term Loan Act because "there is no dispute that Insight Capital was not involved in the formation of the" the parties' agreement and R.C. 1321.36(C) does not prohibit any person from attempting to collect on a void loan. Similarly, Plaintiff argues that the Mortgage Loan Act does not apply to it, since the undisputed evidence shows it did not form the agreement and is not a registrant under that act, and it is not a "supplier" as defined by the Ohio Consumer Sales Practices Act.

LAW & ANALYSIS

At its root, this case is about the law, not the facts. As will be discussed below, the essential facts of the transactions underlying this case are undisputed by the parties' evidence supporting their cross-motions for summary judgment on their respective pleadings.

Plaintiff's complaint

Regarding Plaintiff's claim for relief, the parties disagree about how the underlying transaction fits within the recently revised statutory framework governing lending in Ohio. Specifically, the parties disagree regarding application of two separate yet interrelated statutory laws: the Short-Term Loan Act (R.C. 1321.35 to R.C. 1321.48) and the Mortgage Loan Act (R.C.

1321.51 to R.C. 1321.60). The parties' arguments present a case of first impression regarding the foregoing laws because neither party has cited the Court to any controlling case law directly on point. However, nearly a decade ago, the Supreme Court of Ohio issued a decision settling arguments similar to those presented in this case that related to prior versions of the two laws at issue here. For these reasons, a brief review of that holding will inform the Court's disposition of the parties' arguments.

1. The *Scott* decision

In *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, 13 N.E.3d 1115, ¶ 20, the Supreme Court of Ohio decided whether the underlying loan was permissible under the Mortgage Loan Act or prohibited by the Short-Term Loan Act. The General Assembly enacted the Short-Term Loan Act in 2008 after repealing the Check-Cashing Lender Act. The latter had been enacted in 1996 and allowed licensed check-cashing businesses to issue loans with short-term durations (less than six months) and for small amounts (originally $500, later increased to $800). *Id.* at ¶ 9-10.

The Short-Term Loan Act largely reenacted the Check-Cashing Lender Act "but with a number of substantive changes addressing perceived dangers associated with payday lending." *Id.* After 2008, however, lenders who had been issuing small loans for short-term durations under the Check-Cashing Lender Act continued to issue those loans primarily under the Mortgage Loan Act instead of under the Short-Term Loan Act.[1] When it was enacted in 1965, the Mortgage Loan Act applied only to "lenders who took second mortgages as security for loans," but at the time of the *Scott* decision the statute had been extended "far beyond its initial reach." *Id.* at ¶ 6.

[1] Ohio Legislative Service Commission, *Payday Lending in Ohio*, Members Only Brief, Vol. 133, Issue 6, p. 3 (Feb. 20, 2020); see also *Scott*, 2014-Ohio-2440 at ¶ 2 and 12 (citing prior version of the same publication: Vol. 130, Issue 1, Jan. 23, 2013).

The loan in *Scott* was a single installment of $500 and was required to be repaid approximately two weeks after issuance. The borrower was also required to pay a credit-investigation fee, a loan-origination fee, and interest at the yearly rate of 235.48% (according to the federal truth-in-lending disclosure). The lender was a registrant under the Mortgage Loan Act and was not licensed under the Short-Term Loan Act. *Id.* at ¶ 13-14. Accordingly, the trial court and the Ninth District Court of Appeals held that the loan was prohibited by the Short-Term Loan Act because "the General Assembly intended to prohibit all loans of short duration outside the confines of [the Short-Term Loan Act]." *Id.* at ¶ 17-18.

In reversing the lower courts, the Supreme Court of Ohio emphasized that courts must give effect to the legislature's intent by enforcing the plain language of its statutes when they are not ambiguously written. *Id.* at ¶ 22. The court noted that the Mortgage Loan Act did not "restrict the amount that can be lent or the duration of the loan" made thereunder. *Id* at ¶ 8. The court concluded that the underlying loan was permitted under the Mortgage Loan Act, based on the plain language of how the statute was written at the time, because the loan met the statutory definition of "interest-bearing loan" under R.C. 1321.51(F) and its computation of interest aligned with the provisions of R.C. 1321.57(C). *Id.* at ¶ 27.

Furthermore, the court found the loan was not prohibited under the Short-Term Loan Act because nothing in that law explicitly limited the authority of registrants under the Mortgage Loan Act to make loans. In closing, the court noted that the General Assembly had "not taken any action to preclude the practice of payday-style lending under the other lending acts in effect prior to the [Short-Term Loan Act]." *Id.* at ¶ 37.

2. The Fairness in Lending Act

In 2018, the General Assembly passed the Fairness in Lending Act, 2018 Sub.H.B. 123.[2] The plain text of the Fairness in Lending Act shows that the General Assembly harmonized the various lending laws in R.C. 1321 *et seq* regarding loans for $1,000 or less, or for a duration of one year or less. Licensees under the Small Loan Act (R.C. 1321.01 to R.C. 1321.19) may not make such loans, R.C. 1321.141(A), and registrants under the Mortgage Loan Act likewise may not make such loans, R.C. 1321.592(A). In contrast, only licensees under the Short-Term Loan Act may make loans for $1,000 or less, or for a duration of one year or less. R.C. 1321.39.

Loans under the Short-Term Loan Act must be made pursuant to a written contract which includes certain disclosures set forth in the statute. R.C. 1321.39(C). Those loans may have a duration of less than ninety-one days only if "the total monthly payment on the loan does not exceed an amount that is six per cent of the borrower's verified gross monthly income or seven per cent of the borrower's verified net monthly income, whichever is greater." R.C. 1321.39(B)(2). Short-term loans are subject to numerous restrictions on the fees and charges which may be charged, collected, and received in connection with them, per R.C. 1321.40 and R.C. 1321.403. Among other restrictions, the maximum interest on any small-term loan may not exceed twenty-eight per cent per annum, R.C. 1321.40(A), and "annual percentage rate" is defined to include "[a]ll fees and charges, including interest and the loan origination charge and monthly maintenance fees authorized under section 1321.40 of the Revised Code," R.C. 1321.35(D). Licensees under the Short-Term Loan Act are also prohibited from engaging in numerous other

[2] The Fairness in Lending Act took effect on October 29, 2018. Pursuant to Section 3 of the bill, the substantive changes enacted therein "apply only to loans that are made, or extensions of credit that are obtained, on or after the date that is one hundred eighty days after the effective date of this act," or April 27, 2019. The transaction at issue in the instant case was executed on April 28, 2019.

practices set forth in R.C. 1321.41 and are required to make "a reasonable attempt to verify the borrower's income" before making a short-term loan, per R.C. 1321.46.

3. The loan to April Williams

Having reviewed the parties' evidence attached to their cross-motions for summary judgment on their respective claims for relief, the Court finds there is no genuine issue of material fact regarding the following. On April 28, 2019, Defendant April Williams went to "her local CheckSmart store" to request "a loan in the amount of $500." (Williams Aff., ¶ 3-4). Defendant executed written agreements (Line of Credit Agreement and a Security Agreement) with Green Bear Ohio, LLC dba Crestline Financial. (Scheib Aff., ¶ 14). Copies of those agreements are attached to Plaintiff's complaint. Green Bear is a registrant under the Mortgage Loan Act and is not a licensee under the Short-Term Loan Act.

On its face, the Line of Credit Agreement extended a line of credit to Defendant with a limit of $1,101. (Pl. Ex. 1-B). According to the Security Agreement, Defendant granted to Green Bear a security interest in a "Security Amount" of $500. *Id.* The Line of Credit Agreement states that Defendant had "the option of funding the Security Amount by an advance on" the line of credit "and/or by paying the Security Amount in cash." *Id.* The Line of Credit Agreement states that "on the first day your Account is opened, your advances *must* equal $1,001." (Emphasis added). *Id.* The agreement states that if the Security Amount is funded through an advance from the line of credit, Defendant's "initial available credit will only be about $601.00." *Id.* On April 28, 2019, Defendant "only received $501" from Green Bear (Williams Aff., ¶ 7), which is consistent with the Line of Credit Agreement which reflects the "Amount Drawn and Disbursed in the form of a Check" to Defendant was $501 (Pl. Ex. 1-B). The separate $500 Security Amount advanced from the line of credit was to be held in a trust account held by Via TPG LLC. *Id.* The Security

Agreement states that "[Defendant] is the beneficiary of all right, title and interest in the Security Amount" but Defendant avers in her affidavit that she was never allowed to access the funds held as security. (Williams Aff., ¶ 8). There is no evidence before the Court to contradict Defendant's averment that she was never allowed to access the funds held as the Security Amount. For four months after receiving her first check for $501, Defendant "went back to the same CheckSmart storefront to repay the first advance with a new, larger advance." (Williams Aff., ¶ 12). In the fourth month, on July 23, 2019, Defendant "received an advance in the amount of $600" and never paid that amount back. (Scheib Aff., ¶ 17-18). Green Bear subsequently assigned its rights and interest in the Line of Credit and Security Agreements to Plaintiff Insight Capital, LLC. (Pl. Ex. 1-A; Scheib Aff., ¶ 13-14).

As Plaintiff notes, Defendant's affidavit sets forth certain statements allegedly made to her by CheckSmart employees on April 28, 2019. The Court finds that those statements constitute hearsay and will therefore not be considered. Evid.R. 802; see *T&R Properties, Inc. v. Wimberly*, 10th Dist. No. 19AP-567, 2020-Ohio-4279, 158 N.E.3d 137, ¶ 38-39.

4. R.C. 1321.58

Upon review of the undisputed evidence, the Court finds that the underlying transaction in this case is an open-end loan under the plain language of R.C. 1321.58, as a matter of law, because it meets the criteria stated in division (A) of that section. The Court further finds that the underlying transaction is not a loan for $1,000 or less or a loan with a duration of one year or less, for purposes of R.C. 1321.592(A).

5. R.C. 1321.592(B).

Because the underlying transaction was made pursuant to R.C. 1321.58, Green Bear did not violate the prohibition stated in R.C. 1321.592(A) by entering that transaction. The Court must

now determine whether, as Defendant argues, Green Bear engaged in any act or practice to evade that prohibition in violation of R.C. 1321.592(B).

R.C. 1321.592(B) states that registrants "shall not engage in any act or practice to evade the requirement of division (A) of this section," which prohibits registrants from making loans for $1,000 or less or with a duration of one year or less. The statute does not provide any standard for courts to apply to determine whether a registrant under the Mortgage Loan Act has engaged in acts or practices to evade the prohibition stated in R.C. 1321.592(A). Neither party has cited any controlling case law, and the Court's independent research did not reveal any such authority. The instant question is therefore a significant case of first impression.

The terms used in R.C. 1321.592(B) are not defined by the statute itself. R.C. 1321.592(B) uses the word "evade" as a transitive verb, and as such it is defined by Merriam-Webster[3] to mean "1) to elude by dexterity or stratagem; 2a) to avoid facing up to; 2b) to avoid the performance of; 2c) to avoid answering directly: turn aside; and 3) to be elusive to." Reading the prohibition stated in R.C. 1321.592(A) together with the plain language of R.C. 1321.592(B), the Court understands the latter to mean that certain transactions which are otherwise legally permissible may be found ultimately impermissible upon determination that an act or practice was employed therein to evade the prohibition stated in R.C. 1321.592(A).

Upon review, the Court finds that the totality of the circumstances demonstrated by the undisputed evidence show that Green Bear engaged in acts and practices in the parties' transaction to evade the prohibition on registrants under the Mortgage Loan Act from issuing loans for $1,000 or less or for a duration of one year or less.

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[3] "Evade," *Merriam-Webster.com Dictionary*, https://www.merriamwebster.com/dictionary/evade. Accessed 7/10/2022.

The evidence shows that Defendant sought a simple transaction on April 28, 2019 – a loan for less than $1,000 – and that on that day Green Bear provided Defendant with a check for $501. Viewed in this way, it would appear Green Bear gave Defendant what she was seeking, namely, a short-term loan as described in R.C. 1321.141(A), R.C. 1321.39, and R.C. 1321.592(A), but without complying with any of the myriad restrictions applicable to such loans under the Short-Term Loan Act. As concluded above, however, the parties' ostensibly simple transaction was in reality an extraordinarily convoluted one within the framework of R.C. 1321.58.

That a transaction is convoluted, in and of itself, is not a reason to conclude it is designed to evade some legal restriction. However, as discussed below, because the parties did not stand to benefit in any meaningful way from having structured their transaction in such a legally convoluted manner, the only explanation the Court can discern as to why that structure was used is that it was a stratagem for eluding the restrictions of the Short-Term Loan Act that would have otherwise applied to the parties' transaction.

Upon careful review, the Court finds that the parties' Security Agreement is essentially a legal fiction serving no purpose other than ensuring Defendant's initial draw on the line of credit was for more than $1,000 – a critical amount for purposes of R.C. 1321.141(A), R.C. 1321.39, and R.C. 1321.592(A). On its face, the Line of Credit Agreement gave Defendant the "option" of paying the Security Amount "in cash," but that option is illusory insofar as it is absurd to think any rational borrower would give $500 in cash as security to receive a $501 check in return. And although the Security Agreement states Defendant is "the beneficiary of all right, title, and interest in the Security Amount," the undisputed evidence before the Court shows that Defendant was "never * * * allowed to access the funds" advanced by Green Bear and held in a trust account by Via TPG, LLC. (Williams Aff., ¶ 8).

The Line of Credit and Security Agreements do include boilerplate language associated with security agreements, but for practical reasons the Security Amount in this case did not meaningfully secure Green Bear against any default in repayment by Defendant. In the event of a default by Defendant, Green Bear was entitled to simply take back the money it had never really given. The hollowness of the Security Agreement is best demonstrated by Plaintiff's complaint in this case. Other than referring to the title of the parties' contracts in paragraph one ("a Line of Credit and Security Agreement") the complaint makes no mention of the Security Amount. Mr. Scheib in his affidavit avers Defendant received an advance of $600 and never paid it back, and the complaint asserts Defendant owes that full principal amount of $600, plus fees and interest. Thus, according to Plaintiff's complaint, the Security Amount played no role in securing Green Bear when Defendant defaulted by failing to repay the $600 advanced in July 2019.

Last, the Court notes that, according to the Legislative Service Commission, one aim of the Fairness In Lending Act was "[t]o address the concern of the tendency of some borrowers to remain in a cycle of debt." Ohio Legislative Service Commission, *Payday Lending in Ohio*, Members Only Brief, Vol. 133, Issue 6, p. 5 (Feb. 20, 2020). In her affidavit, Defendant avers that "[e]ach month for the four months after I first received the $500, I went back to the same CheckSmart storefront to repay the first advance with a new, larger advance," and "as interest and fees accumulated * * * I struggled to keep up with payments." (Williams Aff., ¶ 12-13). Defendant appears to have fallen into the very same kind of "cycle of debt" that the Fairness In Lending Act was meant to guard against. That result is consistent with the conclusion that Green Bear engaged in acts and practices to evade the prohibition stated in R.C. 1321.592(A).

R.C. 1321.36(C) states that any short-term loan made by an entity not licensed under the Short-Term Loan Act "is void, and the lender has no right to collect, receive, or retain any

principal, interest, fees, or other charges in connection with the loan." In contrast, R.C. 1321.592(B) does not explicitly state the civil[4] consequence applicable when a registrant under the Mortgage Loan Act engages in acts or practices to evade the prohibition stated in R.C. 1321.592(A). However, R.C. 1321.592(B) employs the mandatory verbiage "shall not" and R.C. 1321.592(C) states that "[n]o registrant shall fail to comply" with R.C. 1321.592. For those reasons the Court finds that because Green Bear engaged in acts and practices to evade R.C. 1321.592(A) the agreements in which those acts or practices were used is unenforceable, as a matter of law. *See* R.C. 1.47(C) ("In enacting a statute, it is presumed that * * * [a] just and reasonable result is intended.").

Defendant's counterclaims

1. R.C. 1321.47(C)

In Defendant's first counterclaim, she asserts Plaintiff is liable to her pursuant to R.C. 1321.47(C). (Def. Answer, ¶ 36). R.C. 1321.47(A) states that persons licensed and persons required to be licensed under the Short-Term Loan Act must adhere to the requirements stated in (A)(1) through (3). Plaintiff is not a licensee under the Short-Term Loan Act. As concluded above, the underlying transaction in this case is not a loan for $1,000 or less or a loan with a duration of one year or less, for purposes of R.C. 1321.36 and R.C. 1321.39, and Plaintiff did not originate the transaction. Therefore, R.C. 1321.47 does not apply to Plaintiff. Defendant's first counterclaim fails, as a matter of law.

2. R.C. 1321.56

Defendant's second counterclaim asserts Plaintiff is liable under R.C. 1321.56. (Def. Answer, ¶ 44). That code section states "[a]ny person who willfully violates section 1321.57 of

[4] *See* R.C. 1321.99(H).

the Revised Code shall forfeit to the borrower the amount of interest paid by the borrower." R.C. 1321.57 sets forth the maximum interest registrants under the Mortgage Loan Act may charge and states various rules and restrictions relating to that interest. Notably, R.C. 1321.571 sets forth an "alternative" maximum interest rates registrants may charge. Regardless, R.C. 1321.57 applies to registrants under the Mortgage Loan Act, and Plaintiff is not such a registrant, but rather the assignee of a registrant, Green Bear. R.C. 1321.56 therefore does not apply to Plaintiff, and Defendant's second counterclaim fails, as a matter of law.

3. Ohio Consumer Sales Practices Act

In her third counterclaim, Defendant asserts Plaintiff is liable under the Ohio Consumer Sales Practices Act. In her pleading, Defendant cites R.C. 1321.44(A). (Def. Answer, ¶ 47). R.C. 1321.44(A) states:

> A violation of section 1321.41 of the Revised Code is deemed an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code. A borrower injured by a violation of section 1321.41 of the Revised Code shall have a cause of action and be entitled to the same relief available to a consumer under section 1345.09 of the Revised Code, and all powers and remedies available to the attorney general to enforce sections 1345.01 to 1345.13 of the Revised Code are available to the attorney general to enforce section 1321.41 of the Revised Code.

R.C. 1321.41 lists numerous requirements and restrictions applicable to licensees under the Short-Term Loan Act. R.C. 1321.44(A) does not apply to Plaintiff because it is not a licensee under the Short-Term Loan Act.

Defendant also argues that Plaintiff meets the definition of a "supplier" under R.C. 1345.01(C) and that "Plaintiff has violated the CSPA by attempting to collect on a void loan issued in violation of the Short Term Loan Act" where "the unlawful nature of the transaction was apparent on the face of the loan documents Plaintiff sought to enforce." However, as concluded above, the transaction in this case did not violate the Short-Term Loan Act.

Defendant's third counterclaim fails, as a matter of law.

4. Civil Conspiracy

Defendant does not present any argument in support of her claim for civil conspiracy in her motion for summary judgment. In addition, "[a] civil conspiracy claim is derivative and cannot be maintained absent an underlying tort that is actionable without the conspiracy." *Morrow v. Reminger & Reminger Co., L.P.A.*, 183 Ohio App.3d 40, 2009-Ohio-2665, 915 N.E.2d 696, ¶ 40 (10th Dist.). No underlying tort claim is pled in Defendant's counterclaims or expounded in Defendant's motion. Defendant's counterclaim for civil conspiracy fails, as a matter of law.

CONCLUSION

For the reasons stated above, Plaintiff's motion for summary judgment is **DENIED** as to Plaintiff's complaint and **GRANTED** as to Defendant's counterclaims. Defendant's motion for summary judgment is **GRANTED** as to Plaintiff's complaint and **DENIED** as to Defendant's counterclaims.

The Court hereby enters judgment in Defendant's favor on Plaintiff's complaint. Plaintiff's complaint is **DISMISSED** at Plaintiff's cost. The Court hereby enters judgment in Plaintiff's favor on Defendant's counterclaims. Defendant's counterclaims are **DISMISSED** at Defendant's cost.

This is a final, appealable order.

The Clerk is directed to serve notice of this Judgment Entry on the parties and note its date of entry upon the journal.

SO ORDERED.

8/23/22
Date

Judge Jodi Thomas